App F IX 4

1946 W

File No 138-46

Serial Nos 5 6

Previous References
ML 207-24 (1-2)
" 56-41 (1-2)
" 142-43 (120 121)
163-38 (1-2)
" 42-43 (122, 123, 132)
138-46 (9 x 10)
ML 158-49 (1)

GENERAL AND REVENUE SECRETARIAT

Serial Nos

Part B for May W

SUBJECT

Right of the Deputy Commissioner to Vote at the election of presidents and Vice-presidents of the town ML Councils & Administrative presidents

D-15948 & 16 45 W

To Die Shimoya

Have instructions that the Dis Cannot Vote at the meeting of the Election of presidents and Vice presidents

KB

Right of D c's to vote at the election of presidents and Vice presidents of Town Municipal Councils as ad-interim pres

App F III-2

General and Revenue Secretariat

File No 8764/L of 1917.

Serial No

From

The Dy Commr Shimoga district

D o no N 3 c 2772 /46-47 dated 20 4 47

Solicits instructions on the matter of the Right of the Dy Commr to vote at the election of presidents and Vice presidents of the Town Municipal Councils as ad interim president under Sec 23 (6) of the Mysore Town Municipalities Act 1933

1) Under Sec 23 2(a) of the Mysore Town Municipalities Act 1933 the Councillors are allowed the privilege of electing the president from among their number in accordance with the Rules prescribed on this behalf

2) Cl (6) of the Same Section enjoins that during a Vacancy in the office of the president of a Municipal Council and when there is no Vice president to take his place the D c at District Head quarters shall, notwithstanding anything Contained in this Act or in the Rules or the notifications issued thereunder, perform the functions of the president

3) Again under Sec 24 (1)(a), it shall be the duty of the president to preside at all meetings of the Municipal Councils, and before the election of the president, the D c acts as ad interim president. Hence the D c has to

NOTE—Contn Sheet

Serial No

preside at the meeting for the election of the president of the Council and a Ruling to this effect has also been given in this office letter no L 11811/ml 42-43 dt 23 3 44 — Marg "A"

4) Under Sec 9 (1) of the Act the Municipal Council shall consist of

(a) elected ~~members~~ Councillors

(b) nominated Councillors

and (c) Ex-officio Councillors.

and immediately after the Constitution of the Council, the names of members are duly notified in the official gazette, and these members only strictly constitute the Council proper

5) In accordance with Go no L 852-9-ml 40-30-5 dated 22 7 30, even ex officio members nominated to the Town and minor Municipal Councils were prohibited from voting in the meetings for the election of presidents and Vice presidents. Since official members of District Boards were given the Right to vote in Go no L 5542-60/L B 82-38-2 dt 9 1 39, Revised orders were issued in the Go dated 27-2-39, on the same analogy, permitting the ex officio Municipal ~~Councillors~~ members who are Councillors in the strict sense of the term, to vote at these meetings. — Marg "B"

6) The whole question revolves upon the point whether the Go who during the

absence of the president acts as an ad interim president, and presides also at the meetings of the councils for the election of presidents and Vice-presidents in that capacity, be deemed to be a Councillor under Sec 90(1) of the Act, in spite of his not being notified as such. But proviso (b) to Rule 5 relating to the election of presidents and Vice presidents of town and minor municipal councils provides for selection by lot immediately, in the event of equal number of votes being cast in favour of two candidates, it has been held that the president has no casting vote at all and much less the power to vote and instructions have been previously issued accordingly in this office letter dated 21-7-41

7) Further, Rule 7 of the election Rules of 1924 provides for contesting the valid validity of the election by filing a petition signed at least by three Councillors before the 15th within 7 days from the date of election, and it is for consideration whether the authority who is required to adjudicate upon contests regarding the validity of elections could himself actively participate in the elections by voting which in effect may amount to a losing of his status as a tribunal for an

imperial enquiry

8) If it is held that the DC has to be considered as being a member of the Municipal Council under Sec 9(1) (b) (ii) by virtue of he performing the functions of the office of the president from time to time as notified by the Govt and that it is incorrect to say to make a distinction between presiding and voting, then the DC as ad interim president can vote at these meetings

9) Since this issue is being raised time and again it may be necessary to give a definite ruling on the point

10) The Law Secretary may also, if approved, be consulted

11) The orders

5/5/47 12) It will be seen from the previous references perhaps that the DC performing the functions of a President under the circumstances of the above kind cannot vote (vide Forms 8 to 12 of the rules in Pl colln Vol 41 - 45 / 172)

13) In this connection I should refer to also invited to Sec 17(2) of

the Delhi Board Act, in which it has been specifically laid down that the Deputy Comm. acting as President or in similar circumstances shall take the place of the President plus an addl member if he is not already a member of the Delhi Board until such elected or nominated President enters upon his duties".

14) The wording of Section 2(6) of the Delhi Act, in similar cases, is somewhat different. It is as follows—

Dump advocate in the office of the President of the M[unicipal] Committee

15) "the Deputy Comm., x x x x for the time being in the case of matters at Delhi Headquarters shall notwithstanding anything contained in this Act or in the rules or notifications issued thereunder perform the functions of a President."

Since he is not nominated as a Member of M[unicipal] C[ommittee], he simply performs the functions of a President as a stopgap arrangement.

16) Further, under the powers (b) to make rule by the Rules relating to

4593

Law Election of Presidents - Three Presidents,

Town Municipalities Act 56 on the State of

Law down that in the case of an equal

No of votes being cast in favour of two

Candidates, a selection of one of them shall

be made by lot - enumerated in Mrs. Raj

been interpreted in para 9 of the WPs, in

pl with 56-H-1 to mean that

the President has no casting vote at all &

he is under obligation to vote

17) the results of the Appellate Authority in

case the validity of the election held happens

to be contested

18) Having regard to the above facts, it may

not be desirable for the

to treat these elections pertaining

Consulted in the matter

19) The Law Secretary may also be

reversed 8/11/47

20) For favour of remarks

Law Secy

W C

21) The point for consideration is whether the Deputy Commissioner, who functions as an interim President under Sec 23(6) of the Town Municipalities Act, and regulates

4593/Law

S 23 (6) Town Municipalities Act powers of Dy C 8764

the conduct of business including election of president under Sec 24(1)(a) of the Act, can be deemed to have the power to vote also

22) In L S G file L 56-41 the Law Secretary has opined that the Deputy Commissioner performs the function of the President during the vacancy of the office of the President an when there is no Vice-President The Deputy Commissioner does not become a member of the Municipal Council by virtue of his acting as an interim President, as he does not come within the purview of Sec 9 (a) of the Town Municipalities Act and much less the power to vote, (vide also opinion expressed in file M 42-43 placed below)

23) When the statute, however, provides that a Chairman shall continue in office until his successor is appointed he presides as Chairman at the first meeting of the new Council Ordinarily, in the case of equality of votes, the Chairman has a casting vote But this power is taken away by Rule 5(b) of the Rules under which in the case of equali of votes, selection is to be made by 'lot' immediately

24) The power of the Deputy Commissioner to preside under Sec 23(6) being a special one, ~~does not confer the power~~ he does not possess all the powers or rights of a Municipal Councillor ~~much less the power to confer the power to vote~~ (including that of voting)

GOVT. OF N.W.F.P. 8202 6 MAY 1947

Law Sec)

11/5

11/5/47

Nursery MC)

13) 9/5

Urgent

OFFICE OF THE MINISTER FOR REVENUE No. 9948 Date 10.5.47

26) The above opinion of the Law Section may be communicated to the D C, Shangla at once for information and guidance

Minister for Rev. & Comp.

8764/L

Dft reply attached

Sir
19/5/47

Sir to ask a draft to the D.C. Shrewsbury

He orders if Copies of the letter may be sent to the other D.C.s also

Mr Sir
13/5

Dr Capel
returned
Sir
19/5/47

D.L.
13/5

1 6 MAY 1947

Issue forms
Sir
19/5/47

To
The Secretary Shrewsbury
No L 15948/Rd 138-46-6 of 16 May
Draws instruction that the Co Council
date of the meeting of the election of
Chair and Vice President
Copies to other D.C's

B- 22 5/47.

Ml 138-46-5

D O No M3.C 2772/46-47

MR N S HIRANNAYYA M A
Deputy Commissioner

OFFICE OF THE DEPUTY COMMISSIONER
SHIMOGA DISTRICT

Dated Shimoga, 20th April 194 7

8764
27 APR 1947

Dear Sir,

I enclose herewith the application recieved from five gentlemen of Shimoga Town who have recently been elected to the Municipal Council They have raised the question whether the Deputy Commissioner has a right to vote at the election of the President and Vice President In this connection, I would like to invite attention to the letter addressed by one of my predecessors Mr Sundara Rao in No M3 Pl 445.C 2884/43-44 dated the 17th May 1944 specifically raising the point whether the Deputy Commissioner should preside over the interim meetings of the Municpal Council and to the reply recieved from Government with thier No L 11811/M1 42-43/122 dated the 23rd May 1944 directing that the Deputy Commissioner has to preside at the meeting for the election of the President and Vice President It is not very clear however whether the Deputy Commissioner could vote at these proceedings though that seems to be the idea from the context

This year the election for the Presidentship is likely to be very keenly contested, and I like to be enlightened whether the Deputy Commissioner could exercise his vote during the elections May I request the favour of a very early instructions of Government in the matter

Yours sincerely,

H N Pallegar, Esq , M A ,LL B ,
Secretary to Government,
Revenue Department,
Bangalore

BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE, BANGALORE

—

Through

The Deputy Commissioner,
Shimoga District, Shimoga

PETITIONERS.- 1) H Sundaram Iyer,
2) K Siddappa,
3) Khaji Abdul Sattar,
4) T Vyasachar,
5) K Seetharama Sastry,

Residents of Shimoga Town

***

The Petitioners beg to state as follows -

1) The Petitioners are the duly elected candidates to the Town Municipal Council, Shimoga, at the recent election

2) The Shimoga Town Municipal Council will be re-constituted from May 1947 with the Deputy Commissioner as the ad-interim President

3) The question, whether the Deputy Commissioner has a right to vote at the election of the President and the Vice-President, has received the attention of the Government from time to time, and the Government are pleased to express their opinion, the Petitioners understand, that the Deputy Commissioner has a right of voting at the election of the President and the Vice-President under Sec 23 Cl 6 read with Sec 24 of Act VIII of 1933 The Petitioners

Petitioners further understand that the Deputy Commissioner was instructed in this behalf at the last Presidential Election during 1944

4) The President's election is likely to be keenly contested by Independent and Congress candidates, and the provision of law and standing orders are likely to receive more than one interpretation at the hands of the contesting parties It is anticipated that the chances will be so equally balanced as to necessitate the election by lot

5) It is necessary, therefore, that the Government should be pleased to clarify the matter by re-iterating what they are pleased to observe at the last Election, viz that the ad-interim President has a right to vote at the meeting held for choosing the President and the Vice-President

6) Sec 23, Cl 6 of the Town Municipal Act enjoins that during the vacancy in the office of the President of a Municipal Council, and when there is no Vice-President to take his place, the Deputy Commissioner shall, notwithstanding anything contained in the Act or in the Rules or Notifications issued thereunder, perform the functions of the President One of the functions of the President under Sec 24 Cl 1(a) is to preside at the Municipal Council and regulate the conduct of business at the Meeting Under Sec 9 Cl 1, every Municipal Council shall consist of --

(a) elected councillors,

(b) nominated councillors -

(i) appointed by name in this behalf

(ii) who are executing the functions of any office from time to time notified in this behalf by the Government

This necessarily implies that the ad-interim President, Deputy Commissioner, is a part and parcel of the Council and is necessarily a member created by the statute and has, therefore, the power to vote at the meeting in question

7 The Petitioners learn that the Government are pleased to express definitely their opinion that the meeting for the election of the President is one such meeting contemplated under Sec 24 of the said Act The President, therefore, cannot preside and conduct a meeting of a statutory body without being a member thereof under Sec 9 1(b) (2) read with Sec 23(5), and when executing the functions of the President under the Statute, he is necessarily a Municipal Councillor for the purpose of exercising the vote

8 The Petitioners, therefore, humbly pray that the Government may be pleased to issue a definite order clarifying the above position of law, as it stands, and declaring that the ad-interim President - Deputy Commissioner - has a right to vote at the ensuing election of the President and Vice-President

Shimoga,
Dated 18th April 1947

PETITIONERS

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

No L 11811/M1 42-43-122

General and Revenue Secretariat,
Dated, Bangalore, 23rd May 1947

From

The Secretary to the Government of His Highness the Maharaja of Mysore,
Law Department,

To

The Deputy Commissioner,
Shimoga District

I am directed to confirm the *marginally noted telegram issued to-day and to state with reference to your letter No M3 P L 445 C 2884/43-44 dated the 17th May 44 that under Section 23(6) of the Mysore Town Municipalities Act, it is laid down that during the vacancy of the office of the President of a Municipal Council, etc , the Deputy Commissioner or the person performing the duties of the Deputy Commissioner for the time being in the case of Municipalities at District Head Quarters shall perform the functions of a President Under Section 24(1)(a) it is laid down that it shal be duty of the President to preside unless prevented by reasonable cause at all meetings of the Municipal Councils etc , to regulate the conduct of the business at such meetings The meeting for the election of a President is one such meeting

Rule 4 of the Election rules of 1927 is inconsistent with the provisions of Section 26(6) of the Act referred to above, and has to be treated as Ultravires Action is being taken seperately to amend the same suitably

Government consider that the Deputy Commissioner has to preside at the meeting for the election of the President Necessary action may be taken accordingly

* Depcom, Shimoga.
Your letter regarding election of President Shimoga Town Municipalxkx Council you have to preside on the occasion Letter follows

I have etc ,
Sd G Ramachandra Rao,
For Secretary to Government,
Law Deprtment,

" Copy'

Immediate

By Express no L 15948/ MC 138-46-6

16/5/47

To

The D C Shimoga Dt

Sir

With Reference to your ~~D~~

Letter no M 3 C 2772/46-47 dated 20-4-47

Seeking instructions as to whether H.S. D C as ad interim president of a municipal Council can vote at the election of the president and the Vice president,

I am directed to state that the D C, by virtue of his acting as ad interim president ~~has no right to the election~~ does not become a member of the Municipal Council as ~~he does not come within the purview of~~ contemplated under Sec 9 of the Mysore Town Municipalities Act 1933.

(private respecting this office letter no L 435 / M/56-41-2 dated 21-4-47 to)

Where the statute provides that a Chairman shall continue in office until his successor is appointed, he presides as chairman at the first meeting of the new Council. Provided in the case of equality of votes, the Chairman has a casting vote but this power is taken away in Rule 5 (6) of the ~~Election~~ Rules

Relating to the election of Presidents ~~of the proceedings~~ of the Town and Manor Municipal Councils ~~which provides~~ which provides ~~in the Act~~ enacted for lots to be drawn in the event of equal votes being cast in favour of two Candidates.

~~On the Examination~~ The power of the Bo to preside under Sec 23 (6) of the Act being a Special one, he does not possess all the Rights of a Municipal Councillor and cannot therefore vote at these meetings.

I have to

Rec'd 13/5

Rec'd 13/5

L 15949-56 / d 16/5/47

Memo re

Copy letter to Dist y

the Dist's prompt y guidance

Yrs

for

Dr. Secretary

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

No L.15948/ML 138-46-6 General and Revenue Secretariat,

Dated Bangalore 16th MAY 1947

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore,

To Revenue Department 82-RPP21.J

The Deputy Commissioner,
Chikmagalur District

Sir:

With reference to your letter No.M.3.C.272/46-47 dated 20th April 1947, seeking instructions as to whether the Deputy Commissioner as Ad-interim President of a Municipal Council can vote at the election of the President and the Vice-president, I am directed to invite reference to this Office letter No.L433/M1.66-41-2 dated the 21st July 1941 and to state that the Deputy Commissioner, by virtue of his merely acting as an Interim-president, does not become a member of the Municipal Council, as contemplated under Section 9 of the Mysore Town Municipalities Act 1933.

When the Statute provides that a Chairman shall continue in office until his successor is appointed, he presides as Chairman at the first meeting of the new council. Ordinarily in the case of equality of votes, the chairman has a casting vote. But this power is taken away by Rule 5 (b) of the Rules relating to the election of Presidents of the Town and Minor Municipal Councils, which provides instead for lots to be drawn in the event of equal votes being cast in favour of two candidates.

The power of the Deputy Commissioner to preside under Section 23 (6) of the Act being a special one, he does not possess all the rights of a Municipal Councillor and cannot,

P. T. O.

cannot, therefore, vote at the meetings.

I have the honour to be
Sir,
your most obedient servant,

Sd: H.N. PALLEDAR
SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT.

To

MEMO.NO. L.15949-56 Dated, Bangalore, the 16th May 1947

Copy of the above is forwarded, with compliments, to the Deputy Commissioner. .....District, for information and guidance.

BY ORDER,

for SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat,

No L.15948/ML 138466 Dated Bangalore 16th MAY 1947

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore,

Revenue Department

To

The Deputy Commissioner,
Shimoga District

Sir:

With reference to your letter No.LL.3.C.2772/46-47 dated 20th April 1947, seeking instructions as to whether the Deputy Commissioner as Ad-interim President of a Municipal Council can vote at the election of the President and the Vice-president, I am directed to invite reference to this Office letter No.L435/LL.55-41-2 dated the 21st July 1941 and to state that the Deputy Commissioner, by virtue of his merely acting as an Interim-president, does not become a member of the Municipal Council, as contemplated under Section 9 of the Mysore Town Municipalities Act 1933.

When the Statute provides that a Chairman shall continue in Office until his successor is appointed, he presides as Chairman at the first meeting of the new council. Ordinarily in the case of equality of votes, the Chairman has a casting vote.. But this power is taken away by Rule 5 (b) of the Rules relating to the election of Presidents of the Town and Minor Municipal Councils, which provides instead for lots to be drawn in the event of equal votes being cast in favour of two candidates.

The power of the Deputy Commissioner to preside under Section 23 (6) of the Act being a special one, he does not possess all the rights of a Municipal Councillor and cannot,

P. T. O.

minister therefore, vote at these meetings.

I have the honour to be
Sir,
your most obedient servant,

Sd: H.N. PALLEGAR

SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT.

MEMO.NO. L 15949-56 Dated, Bangalore, the 16th May 1947

Copy of the above is forwarded, with compliments, to the Deputy Commissioner, ...District, for information and guidance.

BY ORDER,

for SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT.